

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1131

Introduced by Assembly Member Dababneh

February 27, 2015

An act to amend and repeal Section 1633.3 of the Civil Code, and to add and repeal Section 38.6 of the Insurance Code, relating to electronic records.

LEGISLATIVE COUNSEL’S DIGEST

AB 1131, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required offer of renewal or conditional renewal for property insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers’ compensation policy.

Existing law also generally requires that, a record, signature, or contract may not be denied legal effect or enforceability because it is in electronic form. Existing law exempts from this requirement disability insurance and life insurance policies and certificates offered for sale to individuals 65 years of age or older, notice of an increase in premiums on an individual life insurance policy, individual life insurance policies with a face value of less than \$10,000, a policy of individual life

insurance that is initially delivered or issued for delivery in the state on and after January 1, 1990, applications for life insurance or annuity, and a policy replacement notice.

This bill would, for life insurance records, authorize additional persons to send records by electronic transmission by providing that an insurer, agent, broker, or any other person licensed by the Department of Insurance may send electronic records. This bill would expand the scope of electronic notice provisions by allowing the above licensees to send any written record by electronic transmission if not specifically excluded and if the licensee meets specified requirements. The bill would also require the commissioner to submit a report, as specified.

This bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1633.3 of the Civil Code, as amended
2 by Section 3 of Chapter 913 of the Statutes of 2014, is amended
3 to read:

4 1633.3. (a) Except as otherwise provided in subdivisions (b)
5 and (c), this title applies to electronic records and electronic
6 signatures relating to a transaction.

7 (b) This title does not apply to transactions subject to the
8 following laws:

9 (1) A law governing the creation and execution of wills, codicils,
10 or testamentary trusts.

11 (2) Division 1 (commencing with Section 1101) of the Uniform
12 Commercial Code, except Sections 1206 and 1306.

13 (3) Divisions 3 (commencing with Section 3101), 4
14 (commencing with Section 4101), 5 (commencing with Section
15 5101), 8 (commencing with Section 8101), 9 (commencing with
16 Section 9101), and 11 (commencing with Section 11101) of the
17 Uniform Commercial Code.

18 (4) A law that requires that specifically identifiable text or
19 disclosures in a record or a portion of a record be separately signed,
20 including initialed, from the record. However, this paragraph does
21 not apply to Section 1677 or 1678 of this code or Section 1298 of
22 the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, Section 786 as it applies to individual and group disability policies, Section 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by

1 electronic means if the transaction may be conducted by electronic
2 means under any other applicable law.

3 (g) This section shall remain in effect only until January 1, 2019,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2019, deletes or extends that date.

6 SEC. 2. Section 1633.3 of the Civil Code, as amended by
7 Section 4 of Chapter 913 of the Statutes of 2014, is amended to
8 read:

9 1633.3. (a) Except as otherwise provided in subdivisions (b)
10 and (c), this title applies to electronic records and electronic
11 signatures relating to a transaction.

12 (b) This title does not apply to transactions subject to the
13 following laws:

14 (1) A law governing the creation and execution of wills, codicils,
15 or testamentary trusts.

16 (2) Division 1 (commencing with Section 1101) of the Uniform
17 Commercial Code, except Sections 1206 and 1306.

18 (3) Divisions 3 (commencing with Section 3101), 4
19 (commencing with Section 4101), 5 (commencing with Section
20 5101), 8 (commencing with Section 8101), 9 (commencing with
21 Section 9101), and 11 (commencing with Section 11101) of the
22 Uniform Commercial Code.

23 (4) A law that requires that specifically identifiable text or
24 disclosures in a record or a portion of a record be separately signed,
25 including initialed, from the record. However, this paragraph does
26 not apply to Section 1677 or 1678 of this code or Section 1298 of
27 the Code of Civil Procedure.

28 (c) This title does not apply to any specific transaction described
29 in Section 17511.5 of the Business and Professions Code, Section
30 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
31 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
32 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
33 1789.16, or 1793.23 of, Chapter 1 (commencing with Section
34 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
35 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
36 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
37 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
38 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
39 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
40 Division 3 of, Section 3071.5 of Part 5 (commencing with Section

1 4000) of Division 4 of, or Part 5.3 (commencing with Section
2 6500) of Division 4 of this code, subdivision (b) of Section 18608
3 or Section 22328 of the Financial Code, Section 1358.15, 1365,
4 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
5 Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786 as it applies
6 to individual and group disability policies, 10192.18, 10199.44,
7 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the
8 Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
9 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
10 electronic record may not be substituted for any notice that is
11 required to be sent pursuant to Section 1162 of the Code of Civil
12 Procedure. Nothing in this subdivision shall be construed to
13 prohibit the recordation of any document with a county recorder
14 by electronic means.

15 (d) This title applies to an electronic record or electronic
16 signature otherwise excluded from the application of this title under
17 subdivision (b) when used for a transaction subject to a law other
18 than those specified in subdivision (b).

19 (e) A transaction subject to this title is also subject to other
20 applicable substantive law.

21 (f) The exclusion of a transaction from the application of this
22 title under subdivision (b) or (c) shall be construed only to exclude
23 the transaction from the application of this title, but shall not be
24 construed to prohibit the transaction from being conducted by
25 electronic means if the transaction may be conducted by electronic
26 means under any other applicable law.

27 (g) This section shall become operative on January 1, 2019.

28 (h) This section shall remain in effect only until January 1, 2021,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2021, deletes or extends that date.

31 SEC. 3. Section 1633.3 of the Civil Code, as amended by
32 Section 4 of Chapter 913 of the Statutes of 2014, is amended to
33 read:

34 1633.3. (a) Except as otherwise provided in subdivisions (b)
35 and (c), this title applies to electronic records and electronic
36 signatures relating to a transaction.

37 (b) This title does not apply to transactions subject to the
38 following laws:

39 (1) A law governing the creation and execution of wills, codicils,
40 or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

1 (d) This title applies to an electronic record or electronic
2 signature otherwise excluded from the application of this title under
3 subdivision (b) when used for a transaction subject to a law other
4 than those specified in subdivision (b).

5 (e) A transaction subject to this title is also subject to other
6 applicable substantive law.

7 (f) The exclusion of a transaction from the application of this
8 title under subdivision (b) or (c) shall be construed only to exclude
9 the transaction from the application of this title, but shall not be
10 construed to prohibit the transaction from being conducted by
11 electronic means if the transaction may be conducted by electronic
12 means under any other applicable law.

13 (g) This section shall become operative on January 1, 2021.

14 SEC. 4. Section 38.6 is added to the Insurance Code, to read:

15 38.6. (a) (1) Any written record required to be given or mailed
16 to any person by a licensee relating to the business of life insurance,
17 as defined in Section 101 of this code may, if not excluded by
18 subdivision (b) or (c) of Section 1633.3 of the Civil Code, be
19 provided by electronic transmission pursuant to Title 2.5
20 (commencing with Section 1633.1) of Part 2 of Division 3 of the
21 Civil Code, if each party has agreed to conduct the transaction by
22 electronic means pursuant to Section 1633.5 of the Civil Code,
23 and if the licensee complies with the provisions of this section. A
24 valid electronic signature shall be sufficient for any provision of
25 law requiring a written signature.

26 (2) For purposes of this section, the definitions set forth in
27 Section 1633.2 of the Civil Code shall apply. The term “licensee”
28 means an insurer, agent, broker, or any other person who is required
29 to be licensed by the department.

30 (b) In order to transmit a life insurance record electronically, a
31 licensee shall comply with all of the following:

32 (1) A licensee, or licensee’s representative, acquires the consent
33 of the person to opt in to receive the record by electronic
34 transmission, and the person has not withdrawn that consent, prior
35 to providing the record by electronic transmission. A person’s
36 consent may be acquired verbally, in writing, or electronically. If
37 consent is acquired verbally, the licensee shall confirm consent in
38 writing or electronically. The licensee shall retain a record of the
39 person’s consent to receive the record by electronic transmission
40 with the policy information so that it is retrievable upon request

1 by the department while the policy is in force and for five years
2 thereafter.

3 (2) A licensee discloses, in writing or electronically, to the
4 person all of the following:

5 (A) The opt in to receive the record by electronic transmission
6 is voluntary.

7 (B) That the person may opt out of receiving the record by
8 electronic transmission at any time, and the process or system for
9 the person to opt out.

10 (C) A description of the record that the person will receive by
11 electronic transmission.

12 (D) The process or system to report a change or correction in
13 the person's email address.

14 (E) The licensee's contact information, which includes, but is
15 not limited to, a toll-free number or the licensee's Internet Web
16 site address.

17 (3) The ~~opt-in consent form~~ *disclosure* required by paragraph
18 (2) may be set forth in the application or in a separate document
19 that is part of the policy approved by the commissioner and shall
20 be bolded or otherwise set forth in a conspicuous manner. The
21 person's signature shall be set forth immediately below the ~~person's~~
22 ~~opt-in consent~~ *opt-in consent disclosure*. If the licensee seeks
23 consent at any time prior to the completion of the application,
24 consent and signature shall be obtained before the application is
25 completed. If the person has not opted in at the time the application
26 is completed, the licensee may receive the ~~opt-in~~ *opt-in* consent at
27 any time thereafter, pursuant to the same opt in requirements that
28 apply at the time of the application. The licensee shall retain a
29 copy of the ~~confirmation and electronic signature, if either is~~
30 ~~required~~, *signed opt-in consent disclosure* with the policy
31 information so that each is retrievable upon request by the
32 department while the policy is in force and for five years thereafter.

33 (4) The email address of the person who has consented to
34 electronic transmission shall be set forth on the ~~consent form and~~
35 ~~on the policy declaration page or annual statement if sent to the~~
36 ~~disclosure. In addition, if the person who consented receives an~~
37 ~~annual statement, the email address of the person who has~~
38 ~~consented~~ *consented shall be set forth on that record.*

1 (5) The licensee shall annually provide one free printed copy
2 of any record described in this subdivision upon request by the
3 person.

4 (6) If a provision of this code requires a licensee to transmit a
5 record by *first class mail*, regular mail, does not specify a method
6 of delivery, or is a record that is required to be provided pursuant
7 to Article 6.6 (commencing with Section 791), and if the licensee
8 is not otherwise prohibited from transmitting the record
9 electronically under subdivision (b) of Section 1633.8 of the Civil
10 Code, then the licensee shall maintain a process or system that can
11 demonstrate that the record provided by electronic transmission
12 was both sent and received consistent with Section 1633.15 of the
13 Civil Code. If a different method of sending or receiving is agreed
14 upon by the licensee and the person pursuant to Section 1633.15
15 of the Civil Code, a licensee shall comply with the provisions of
16 this subdivision. The licensee shall retain and document
17 information so that the documentation and information is
18 retrievable upon request by the department while the current policy
19 is in force and for five years thereafter related to its process or
20 system demonstrating that the record provided by electronic
21 transmission was sent to the person by the applicable statutory
22 regular mail delivery deadlines and received electronically. The
23 record provided by electronic transmission shall be treated as if
24 mailed so long as the licensee delivers the record to the person in
25 compliance with the applicable statutory regular mail delivery
26 deadlines: *record may be transmitted by electronic transmission*
27 *if the licensee complies with all of the requirements of Section*
28 *1633.15 of the Civil Code.*

29 (A) Acceptable methods for a licensee to demonstrate that the
30 record was sent to the person include simple mail transfer protocol
31 server log files indicating transmission, or other methodologies
32 indicating sent transmission consistent with the standards set forth
33 in Section 1633.15 of the Civil Code.

34 (B) Acceptable methods for the licensee to demonstrate that the
35 record was received by the person include server log files indicating
36 that the email or application has been received, or log files showing
37 that the person logged into his or her secured account with the
38 licensee or other methodologies indicating received transmission
39 consistent with the standards set forth in Section 1633.15 of the
40 Civil Code.

(7) Notwithstanding subdivision (b) of Section 1633.8 of the Civil Code, if a provision of this code requires a licensee to transmit a record by return receipt, registered mail, certified mail, signed written receipt of delivery, or other method of delivery evidencing actual receipt by the person, and if the licensee is not otherwise prohibited from transmitting the record electronically under Section 1633.3 of the Civil Code and the provisions of this section, then the licensee shall maintain a process or system that demonstrates proof of delivery and actual receipt of the record by the person consistent with this paragraph. The licensee shall document and retain information demonstrating delivery and actual receipt so that it is retrievable, upon request, by the department at least five years after the policy is no longer in force. The record provided by electronic transmission shall be treated as if actually received if the licensee delivers the record to the person in compliance with applicable statutory delivery deadlines. A licensee may demonstrate actual delivery and receipt by any of the following:

(A) The person acknowledges receipt of the electronic transmission of the record by returning an electronic receipt or by executing an electronic signature.

(B) The record is made part of, or attached to, an email sent to the email address designated by the person, and there is a confirmation receipt, or some other evidence that the person received the email in his or her email account and opened the email.

(C) The record is posted on the licensee's secure Internet Web site, and there is evidence demonstrating that the person logged onto the licensee's secure Internet Web site and downloaded, printed, or otherwise acknowledged receipt of the record.

(D) If a licensee is unable to demonstrate actual delivery and receipt pursuant to this paragraph, the licensee shall resend the record by regular mail to the person in the manner originally specified by the underlying provision of this code.

(8) Notwithstanding any other law, a notice of lapse, nonrenewal, cancellation, or termination of any product subject to this section may be transmitted electronically if the licensee demonstrates proof of delivery as set forth in paragraph~~(7)~~: (7) *and complies with the other provisions in this section.*

1 (9) If the record is not delivered directly to the electronic address
2 designated by the person but placed at an electronic address
3 accessible to the person, a licensee shall notify the person in plain,
4 clear, and conspicuous language at the electronic address
5 designated by the person that describes the record, informs that
6 person that it is available at another location, and provides
7 instructions to the person as to how to obtain the record.

8 (10) (A) Upon a licensee receiving information indicating that
9 the record sent by electronic transmission was not received by the
10 person, the licensee shall, within five business days, comply with
11 either clause (i) or (ii):

12 (i) Contact the person to confirm or update the person's email
13 address and resend the record by electronic transmission. If the
14 licensee elects to resend the record by electronic transmission, the
15 licensee shall demonstrate the transmission was received by the
16 person, pursuant to paragraph (6), (7), or (8). If the licensee is
17 unable to confirm or update the person's email address, the licensee
18 shall resend the record by regular mail to the licensee at the address
19 shown on the policy,~~or~~ *or*, if the underlying statute requires
20 delivery in a specified manner, send the record in that specified
21 manner.

22 (ii) Resend the record initially provided by electronic
23 transmission by regular mail to the insured at the address shown
24 on the policy,~~or~~ *or*, if the underlying statute requires delivery in
25 a specified manner, send the record in that specified manner.

26 (B) If the licensee sends the first electronic record within the
27 time period required by law and the licensee complies with both
28 paragraph (5) and subparagraph (A) of this paragraph, the record
29 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be
30 treated as if mailed in compliance with the applicable statutory
31 regular mail delivery deadlines.

32 (11) The licensee shall not charge any person who declines to
33 opt in to receive a record through electronic transmission from
34 receiving a record electronically. The licensee shall not provide a
35 discount or an incentive to any person to opt in to receive electronic
36 records.

37 (12) The licensee shall verify a person's email address via paper
38 writing sent by regular mail when more than 12 months have
39 elapsed since the license's last electronic communication.

1 (c) On or before January 1, 2020, the commissioner shall submit
2 a report to the Governor and to the committees of the Senate and
3 Assembly having jurisdiction over insurance and the judiciary,
4 regarding the impact and implementation of the authorization of
5 the electronic transmission of certain insurance renewal offers,
6 notices, or disclosures as authorized by this section. The report
7 shall include input from insurers, consumers, and consumer
8 organizations, and shall include an assessment of the department's
9 experience pertaining to the authorization of the electronic
10 transmission of insurance renewals as authorized by this section.

11 (d) Notwithstanding paragraph (4) of subdivision (b) of Section
12 1633.3 of the Civil Code, for any policy of life insurance, as
13 defined in Section 101, any statutory requirement for a separate
14 acknowledgment, signature, or initial, which is not expressly
15 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,
16 may be transacted using an electronic signature, or by electronic
17 transaction, subject to all applicable provisions of this section.

18 (e) The department may suspend a licensee from providing
19 records by electronic transmission if there is a pattern or practices
20 that demonstrate the licensee has failed to comply with the
21 requirements of this section. A licensee may appeal the suspension
22 and resume its electronic transmission of records upon
23 communication from the department that the changes the licensee
24 made to its process or system to comply with the requirements of
25 this section are satisfactory.

26 (f) This section shall remain in effect only until January 1, 2021,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2021, deletes or extends that date.